



California Fair Political Practices Commission

October 28, 1988

P. Addison Covert
Kronick, Moskovitz, Tiedemann & Girard
770 L Street, Suite 1200
Sacramento, CA 95814-3363

Re: Your Request for Advice
Our File No. A-88-376

Dear Mr. Covert:

You have requested advice on behalf of Mr. John Hall about application of the conflict-of-interest provisions of the Political Reform Act (the "Act")^{1/} to his duties as a school board member of the Junction City Elementary School District. This letter confirms the telephone advice I provided to you on October 3, 1988.

QUESTIONS

(1) Is Mr. Hall required to disqualify himself from participating in the decision to appoint a building project inspector when his father is one of the applicants for the position?

(2) May the school board, with or without Mr. Hall's participation in the decisionmaking process appoint Mr. Hall's father to the position in question?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSION

1. Mr. Hall is not required to disqualify himself from participating in the decision to appoint a building project inspector.

2. The Act does not prohibit the school board from appointing Mr. Hall's father to the position. However, you should consider whether this question presents issues under Section 1090.

FACTS

Mr. Hall is a member of the governing board of the Junction City Elementary School District. The district is required to retain a "building project inspector" for a state funded school construction project. The district has advertised for the position and one of the applicants is Mr. Hall's father.

Mr. Hall and his family currently live on his father's property. This is a temporary arrangement and is expected to end in approximately two months. There are no financial exchanges for this arrangement. Mr. Hall and his father do not have any direct business ties.

ANALYSIS

Section 87100 prohibits any public official from making, participating in or attempting to influence any governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his immediate family or on:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103 (c) and (e).

Mr. Hall is a public official. (Section 82048). The decision whether or not to appoint Mr. Hall's father will probably have a material financial effect on Mr. Hall's father. If the decision has a material financial effect on a member of Mr. Hall's immediate family, he must disqualify himself from participating in the decision. For purposes of this section, immediate family is limited to Mr. Hall's wife and dependent children. (Section 82029.) Therefore, the familial relationship does not require Mr. Hall to disqualify himself from participating in the decision.

Mr. Hall and his family currently reside with his father, but there are no financial exchanges for this arrangement. Section 82028 defines "gift" as "any payment to the extent that consideration of equal or greater value is not received...." The definition of payment in Section 82044 includes the "rendering of money, property, services or anything else of value, whether tangible or intangible."

Mr. Hall has received a benefit, something of value, as a result of his rent-free residence with his father. There are no facts to indicate that his father has received consideration of equal or greater value. However, the definition of a "gift" in Section 82028 excludes gifts received from a parent. (Section 82028(b)(3).) The rent-free lodging received by Mr. Hall therefore does not constitute a gift for purposes of Section 87103(e), or income^{2/} for purposes of Section 87103(c). Since the decision whether or not to appoint Mr. Hall's father will not have a material financial effect on a member of Mr. Hall's immediate family, a source of income to him, or a donor of a gift to him, the Act permits Mr. Hall to participate in the decision.

The Act does not prohibit the school board from appointing Mr. Hall's father to the position of building project inspector. However, Government Code Section 1090 does impose restrictions on the conduct of public officials in making government contracts. Section 1090 is not part of the Act, thus we cannot advise you about your duties under that law. Any questions about Section 1090 should be addressed to the Attorney General.

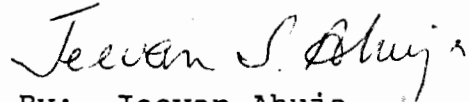
^{2/} Income, as defined in Section 82030, includes gifts.

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If you have any further questions regarding this matter,
please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script, reading "Jeevan S. Ahuja".

By: Jeevan Ahuja
Counsel, Legal Division

DMG:JA:ld



California Fair Political Practices Commission

September 29, 1988

P. Addison Covert
Kronick, Moskovitz, Tiedemann
& Girard
770 L Street, Suite 1200
Sacramento, CA 95814-3363

Re: 88-376

Dear Mr. Covert:

Your letter requesting advice under the Political Reform Act was received on September 29, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh

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ANN SIPRELLE FINAN

September 26, 1988

OF COUNSEL
E. KENDELL DAVIS (1906-1987)
LEONARD M. FRIEDMAN
WILLIAM E. BYRNE

Ms. Diane Griffith
General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95814

Re: Junction City Elementary School District; Fair
Political Practices Commission Advice Request

Dear Ms. Griffith:

Our office has been authorized on behalf of Mr. John Hall to request advice from the Fair Political Practices Commission ("FPPC") concerning a potential conflict of interest he may have in voting on a matter in his role as a school board member of the Junction City Elementary School District.

The Junction City Elementary School District (the "District") has currently entered into Phase III of a new State funded school construction project and has been authorized to go to bid on the project. In conjunction with going to bid, the District will be required under law to retain a "Building Project Inspector" to perform services on behalf of the District for the project. The District has begun the process of advertising for the position of Building Project Inspector and is in a position to conduct final interviews and award the position to an inspector in mid-October 1988.

One of the applicants for the position of Building Project Inspector is school board member Hall's father.

School Board Member Mr. Hall and his family currently live on his father's property. This is a temporary arrangement while Mr. Hall is in the process of building a new home, and is predicted to end in approximately two months. There are no financial exchanges for this arrangement, and neither Mr. Hall nor his father have any direct business ties.

Ms. Diane Griffith
September 26, 1988
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7177.1-LT-092388-358

There are several facts in the above discussion that indicate that Mr. Hall may have a conflict of interest in voting to approve the hiring of the person selected to fill the position of Building Project Inspector. Your advice is requested on the following matters:

1. Whether Mr. Hall's relationship with his father, and his father's candidacy for the position of Building Project Inspector pose a conflict of interest for Mr. Hall in any manner in which the District's Board may be acting to fill this position?
2. If such a conflict is found to exist, whether Mr. Hall must refrain from all Board discussions and negotiations in regard to filling the position and whether Mr. Hall must refrain from voting on the matter?
3. Assuming Mr. Hall refrains in the manner noted in paragraph 2 above, whether the Board may still act to fill the position of "Building Project Inspector" notwithstanding the fact that a candidate for the position is Mr. Hall's father?
4. Whether the Board, with or without Mr. Hall's participation or vote, may appoint Mr. Hall's father to the position in question?

As noted above, the District wishes to vote on the matter at its mid-October 1988 meeting. Therefore, we are concerned about receiving your opinion before that date. We understand that you normally require 21 working days to return opinions requested from your office. We understand these time constraints, but request that as an alternative we receive an oral opinion on this matter prior to the Board's mid-October meeting.

Your kind attention to this matter is appreciated in advance. Please do not hesitate to contact this office if there is any further information required or if you have any questions or comments in regard to this matter.

Very truly yours,



P. ADDISON COVERT

PAC:cas

cc: Lee F. Mayer, President, Board of Trustees
John Hall, Trustee
Donna Moore, Administrator

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